

1. This memorandum is in response to your verbal request for a study of the effect of Section 22 of the Internal Security Act of 1950 (the McCarran Bill) upon the so-called "100 aliens" proviso of Public Law 110.

2. Section 22 of the McCarran Bill provides, inter alia, for the exclusion of many classes of aliens, and the following excerpt, while it is merely a standardized clause, is of utmost importance in this problem:

"Sec. 9. Any statute or other authority or provision having the force or effect of law, to the extent that it is inconsistent with any of the provisions of this Act, is hereby expressly declared to be inapplicable to any alien whose case is within the purview of this act." (Emphasis ours).

3. It is readily apparent that the controlling factor is whether or not the "100 aliens" proviso is "within the purview" of the quoted section of the McCarran Bill. One of the best indications that it is NOT "within the purview" is the following portion of a statement submitted by Senator McCarran on the floor of the Senate:

"Mr. President, the limited authority the Government now has to offer asylum in our country to such persons is not disturbed by Section 22 of this bill. Furthermore, as I pointed out during debate on this bill on the floor of the Senate, the legislation recently passed by the Congress permitting the admission of up to 100 aliens per year for intelligence reasons is not repealed or otherwise affected by H.R. 2400. . . ." (Congressional Record of 23 September 1950, page 15617).

The above statement was made during debate on the President's veto message. Senator McCarran requested that his analysis of the veto message be printed in the Congressional Record. His analysis was printed and the quotation is the Senator's reply to the President's criticism of Section 22.

4. Effect of McCarran Statement Upon a Court. By repeated decisions of the Supreme Court, it has come to be well established that debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the lawmaking body. (Aldridge vs. Williams, 3 How. 9, 24; United States vs. Union Pacific R. Co., 91 U. S. 72, 79; United States vs. Trans-Missouri Freight Assn.,

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166 U. S. 280, 318). However, reports of committees stand upon a more solid footing, and may be regarded as an exposition of the legislative intent in a case where otherwise the meaning of the statute is obscure. This line of reasoning has been extended to include explanatory statements in the nature of a supplemental report made by the committee member in charge of a bill in the course of passage. (Pennsylvania R. Co. vs. International Coal Mining Co., 230 U. S. 104, 198; United States vs. St. Paul M. and M.R. Co., 247, U. S. 310, 318; United States vs. Coca-Cola Co., 241 U. S. 265, 281). Inasmuch as Senator McCarran was in charge of the bill, and since his statement could be considered in the nature of a supplemental explanatory report, it is reasonable to believe that even a court would consider his words as an indication of legislative intent. There are numerous cases which could be cited in support of this position.

5. Effect of McCarran Statement upon the Attorney General. Since any controversy in this matter probably will be settled by conference rather than by a court, it is necessary to consider the probable effect of the McCarran statement upon the Attorney General. We know of no valid reason the Attorney General could give for a refusal to consider the words of Senator McCarran. When a court states that a floor debate is not a reliable guide to the meaning of a statute, two reasons are often advanced. One reason is that words are spoken hastily in a debate, with insufficient reflection upon their meaning. This reason should have no bearing upon our problem because the words quoted above were taken from a prepared statement of Senator McCarran. The other reason often advanced is that the law as passed represents the majority view of the Congress and the words spoken previously do not. This reason should have little bearing upon our problem, because the statement of Senator McCarran was made to explain the future operation of the Act to the legislators. President Truman, in vetoing the law, has stressed its effect upon the nation's intelligence services. Senator McCarran's statement was in rebuttal to the veto message, and he explained that the law would not affect the "100 aliens" proviso. The law was passed shortly after the Senator had so explained its meaning.

6. Committee Reports and Hearings. There is no reference to the "100 aliens" proviso in Senate Report No. 2230, which accompanied the introduction of S. 1832. The same is true of House Report No. 3112, which is the conference report on the McCarran Bill. We have not read all of the testimony presented at the hearings on S. 1832, but have examined all of the testimony of all U. S. officials and found no reference to the "100 aliens" proviso. This is at least some indication that the committee did not consider Public Law 110 "within the purview" of the McCarran Bill.

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7. Other Arguments. The following are additional arguments to indicate that Congress did not consider the "100 aliens" proviso "within the purview" of the new bill:

a. "Subversive" Argument. The entire McCarran Bill is aimed at the control of subversive activities. This is evident from a reading of the legislative findings in the Act itself. More specifically, Section 22 is aimed directly at subversives. The hearings (on S. 1832) and the committee report (No. 2230) contained numerous references to subversive aliens. Public Law 110, on the other hand, is designed to assist aliens who have been of assistance to the national security of intelligence mission. Therefore, it is reasonable to conclude that the McCarran Bill does not affect the "100 aliens" proviso.

b. "Discretion" Argument. The committee which formulated Section 22 is on record as favoring more discretion for those who are charged with administering the laws relating to the entry of aliens into this country. (See page 27 of Senate Report No. 2230). Since Public Law 110 places discretion regarding the "100 aliens" in the hands of the Director of Central Intelligence, the Attorney General, and the Commissioner of Immigration, there is reason to believe that proviso meets with the approval of the Committee.

c. "Exceptions" Argument. Senate Report No. 2230 includes a special reference to "four exceptions" in the immigration laws prior to the enactment of the McCarran Bill. (See page 19 of the Report). Public Law 110 is not mentioned among these exceptions, indicating it may be qui generis as far as the committee is concerned. Perhaps the phrase, expressio unius est exclusio alterius, is applicable here. At any rate, this is at least some indication that the CIA Act is not "within the purview" of the new law.